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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,783	10/23/2003	Tatsuo Makii	450100-04791	7173
7590 06/11/2008				
William S. Frommer, Esq. FROMMER LAWRENCE & HAUG LLP 745 Fifth Avenue New York, NY 10151				
EXAMINER				
SELBY, GEVILL V				
ART UNIT		PAPER NUMBER		
2622				
MAIL DATE		DELIVERY MODE		
06/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/691,783

Applicant(s)

MAKII, TATSUO

Examiner

Gevell Selby

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 5 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 23 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/ISD)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 5 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagano, US 2002/0012052 in view of Agrawal et al., US 2003/0227664.**

In regard to claim 5, Nagano, US 2002/0012052, an imaging apparatus comprising an optical unit, wherein said optical unit comprises:

an optical barrel (see figure 16, barrel holding lens group 1a-1c), a fixed barrel (see figure 16, element 3) disposed at a rear side portion on an optical axis of said optical barrel, at least one lens barrel (see figure 16, element 2) being movable along said optical axis with respect to said fixed barrel (see para 83 and 84: cylindrical stationary portion 3 is the fixed barrel and lens holding frame 2 is the movable barrel),

an iris (see figure 16, element 45) for adjusting an amount of light passing on said optical axis (see para. 142);

a solid-state image sensor (see figure 16, element 10) disposed at a backside portion on the optical axis of said lens barrel for receiving light passed by said iris (see para 142); and

an infrared adjuster (see figure 16, element 9) provided on said optical axis and interposed between said iris and said image sensor.

The Nagano reference does not disclose in the embodiment described above an electro-chromic infrared adjuster having a transmittance to infrared wavelengths electrically controlled to adjust an amount of infrared electromagnetic wave to be transmitted therethrough to said image sensor and wherein imaging apparatus does not have in infrared cutoff filter and captures images at night. However, the Nagano reference discloses several design choices for the light adjustment unit shown in figures 31-35, wherein in one embodiment the adjustment unit or electro-chromic infrared adjustment unit that is formed with a near infrared light cut filter (see figure 32, element 216) and an electro-chromic element (218) (see para. 193), as well teaching that the material element has a function of a near infrared light cut filter, so that the near infrared cut filter need not be included with the material element.

Agrawal et al., US 2003/0227664, teaches electrochromic filters that can block or pass both visible and the near infrared light, wherein this may be useful for camera, such as night vision equipment, which needs to work both during the night, using infrared radiation, and day, using visible radiation, and employs CCD or CMOS imagers (see para 83).

It would have been an obvious design choice to one of ordinary skill in the art at the time of invention to have been motivated to modify the material element of the Nagano reference in view of the Agrawal reference to have an electro-chromic infrared adjuster provided on said optical axis and interposed between said iris and said image sensor, said electro-chromic infrared adjuster having a transmittance to infrared wavelengths electrically controlled to adjust an amount of infrared electromagnetic wave to be transmitted therethrough to said image sensor allowing the imager to capture imaging at both night and day, in order allow the camera to operate in more environments capturing information that would not otherwise be available, making it more versatile for the user.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gevell Selby whose telephone number is 571-272-7369. The examiner can normally be reached on 8:00 A.M. - 5:30 PM (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on 571-272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gvs

/Lin Ye/
Supervisory Patent Examiner, Art Unit 2622